

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SHILOH HYLTON,

Petitioner,

- against -

WILLIAM PHILLIPS, Superintendent,
Greenhaven Correctional Facility,

Respondent.

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GARAUFIS, United States District Judge.

ORDER
05-CV-4077 (NGG)

Pro se petitioner Shiloh Hylton seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. By letter dated 9/19/05 from petitioner Hylton to Judge Edward Korman, who was then assigned to this case,¹ Hylton requested that his petition be held in abeyance so that he could exhaust his state court remedies, specifically so that he could file a N.Y. C.P.L. 440.10 motion in New York Supreme Court. (Docket Entry # 4). The stay was granted by Judge Korman on October 11, 2005 under the condition that the Petitioner advise the Court within 60 days of the denial of his application pursuant to N.Y. C.P.L. 440.10. (Docket Entry #6).

By letter dated January 26, Petitioner Hylton informed this court that his 440.10 motion had been denied, as had his application for leave to appeal the 440.10 decision to the Appellate Division Second Department. Hylton further informed the court that “as [he] was going over [his] paperwork” he discovered that he also had an unexhausted ineffective assistance of counsel claim with respect to his appellate counsel. (See Docket Entry # 10). He now hopes to exhaust

¹ This case was reassigned to this court on October 21, 2005.

that claim by filing a writ of error coram nobis, and asserts that he did not raise this issue in his initial petition because he “wasn’t aware of such an issue.” Hylton requests that the stay and abeyance previously granted be extended to permit the Petitioner an opportunity to exhaust this claim.

I hereby exercise my discretion to stay this petition and hold it in abeyance while the petitioner returns to state court to exhaust this unexhausted claim. Rhines v. Weber, 544 U.S. 269 (2005). The stay is again granted under the condition that Petitioner advise the Court within thirty (30) days of the denial of his petition for writ of error coram nobis. The Clerk of the Court is directed to mail a copy of this Order to the pro se petitioner.

SO ORDERED.

Date: February 22, 2006
Brooklyn, New York

/s/
NICHOLAS G. GARAUFIS
United States District Judge